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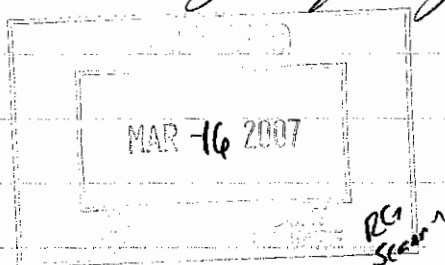
Dear Clerk

I received your notice today and am stumped. I filed motions to redress explaining in more detail cases 06-641 SLR and 06-682 SLR (see enclosed)

I don't understand how these cases are closed until you address the issues included. I ask that under rule 60 for redress that if you have decided ~~to~~ not to address these please recuse yourself so my procedure due process violation can be addressed and corrected.

As for the pending case 07-84 SLR because these former cases are [not] officially closed I believe this case is still opened.

Thank you for your fast response



James A. Lewis Jr.
1181 Paddock Rd.
Amherst, N.H.

P.S. if you need proof of mailing. I have law library forms signed from copies made and business offices receipt for mailing. I also sent copies to the Dept. of Justice at the same time.

mailed
12/26/2006

In the United States District Court
for the District of Delaware

James St. Louis
✓ plaintiff

Civil Action
06-641 SLR

Ralph Herverix, David Pierce
and Officer Bernie Williams
defendants

motion to
recess
issues

James St. Louis hereby petitions the
Court for review of decision and complaint
issued on the 14th day of December 2006

The foregoing request is made
under the following arguments.

#1. After reading Judge Robinson's remarks petitioner realizes he did a terrible effort to explain the incidents.

A. Yes alot of actions involved in Civ. # 06-236 -SLR and this complaint were the same for the below reasons.

#1 Lt. Morris and the Kitchen had their own disciplinary hearing with Lt. Morris ordering the petitioner written up, she also did the fact finding and was the final say in the disciplinary hearing ending in Termination. From start to finish she violated procedures set forth by the Kitchen policy and the prison policy.

#2 In judges #3 response it was said Ralph Hemenway presided over the disciplinary hearing.

(A) petitioner wrote to Deputy Warden Pierce for an [appeal] of a disciplinary hearing and overturn of conviction and rehiring. But instead of an overturn of conviction because petitioner questioned the legality of proceedings received a 2nd disciplinary hearing and was given further punishment and sanctions as an example of what not to question as far as Constitutional

rights.

#3 Petitioner knows alot of facts are duplicated, but must be to explain the procedures used to further punish petitioner for questioning policy.

If you look at petitioners letters to Deputy Warden Pierce you will see where petitioner ask for his help in releaving on injustice already done. In doing so he appointed Bernie Williams and had a lt. look into the situation. All along petitioner told everyone this was an appeal but to no avail. And in retaliation petitioner got punished even greater for filing an appeal. A violation of his 8th Amendment right.

The petitioner is helpless in this situation and has only the courts to turn to for help. The petitioner wants the court to realize this is a duty event and that is why he asked the court for an injuction until the state can redress this issue and bring about a system that would be fair to all inmates and make the system for appeal a fair one not a retaliation for questioning authority as in petitioners case.

4 In *Carey v. Piphus* 435 U.S. 247, 98 S.Ct. 1042 it says when defendant argues procedures involving violations of constitutional rights he is entitled to damages under 1983 even if defendant is [NOT] seeking wrongful conviction. and in this case at hand petitioner is not only claiming a violation of procedures violating petitioners due process rights but also retaliation because he questioned those procedures with the added sanctions and punishments inflicted on him.

5 The above reasons are why petitioner is asking those named along with the state of Delaware to be held liable for their inactions and actions in their professional and individual capacities.

James A. Lewis
 SB1 446518
 1181 Paddock Rd
 Smyrna Del.

Under Hewitt v. Helms 103 S.Ct. 864

The federal regulations created a liberty interest in not being subjected to disciplinary segregation without due process of law, as done in petitioners case it shows violation.

United States District Court
District of Delaware

James St. Louis
plaintiff

v

Ralph Henerin, David Pierce
and officer Bernie Williams
defendants.

Civil Action
06-6415LR

petition for
appointment of
counsel

James St. Louis hereby petition the
court for appointment of counsel for the
following reasons

James St. Louis
181 446518
1181 Paddock Rd
Amgona Del.
19977

Motion for Appointment of Counsel

1. factual complexity

2. plaintiff ability to investigate

The plaintiff is locked up in segregation and has no ability to investigate the facts. i.e. he is unable to identify, locate and interview witnesses see *Tucker v Randall* 948 F.2d 388 / *Gutson v Coughlin* 679 F.Supp 270 *Armstrong v Snyder* 103 FRD 96.105

In addition this case will require considerable discovery concerning the identity of witnesses, the officer and his reports and statements made and history of those involved with like reports, see *Tucker v Dickey* 613 F.Supp 1124, 1133-34 (need for discovery supports appointment of counsel)

3. conflicting testimony - the plaintiff's account of his happenings is squarely in conflict with statements elicited by officials. This aspect of the case will be a credibility contest between the defendant and the plaintiff (and such inmate witnesses as can be located) the existence of these credibility issues support the appointment of counsel see *Gutson v Coughlin* 679 FS

270, 273

4. The ability of the indigent to pursue claim

The plaintiff is an indigent prisoner with no legal training. A factor that supports the appointment of counsel see *Whisenant v Giam* 739 F2d 160, 163. In addition he is confined to segregated housing and limited to legal materials see *Rages v Johnson* 969 F2d 700, 703-04. (Citing lack of ready access to a law library as a factor supporting appointment of counsel.

5. Legal complexity

The plaintiff has asked for a jury trial, which requires much greater legal skills than the plaintiff has or can develop. see *Abdullah v Ginter* 949 F2d 1032, 1036 (citing jury demand as a factor supporting appointment of counsel.

6. Merits of the case the plaintiff alleges if proved clearly would establish a constitutional violation.

7. In deciding whether to appoint counsel for an indigent litigant the Court should consider the factual

complexity of this case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues) (see *Abdullah v. Guntis* 949 F2d 1032)

In addition, courts have suggested that the most important factor is whether the case appears to have merit see *Cooper v. A Sargenti Co. Inc.* 877 F2d 170, 173

Wherefore, for the foregoing reasons, the Court should grant the plaintiff's motion and appoint counsel in this case.

I declare under penalty of perjury that the foregoing is true and correct.

James L. Lucis
SBI # 446518
Delaware Correctional
1181 Paddock Road
Amgona DE.

Mailed
12/26/2006

United States District Court
District of Delaware

James A. Louis
v
 plaintiff

Civil Action
06-682 SLR

Officer J. Michael Wilson
Lauren Hatcher, Melanie
Withers and Buster Richardson

petition for
Appointment of
Counsel

James A. Louis hereby petitions the
court for appointment of counsel for the
following reasons

James A. Louis
NBI 446518
1181 Paddock Rd
Aryana DE.
19917

Motion for Appointment of Counsel

1. factual complexity

2. plaintiff ability to investigate

The plaintiff is locked up in segregation and has no ability to investigate the facts. i.e. he is unable to identify, locate and interview witnesses see *Jucker v Randall*

948 F2d 388 / *Gatson v Coughlin* 679 F.Supp 216
Armstrong v Snyder 103 FRD 96.105

In addition this case will require considerable discovery concerning the identity of witnesses, the officer and his reports and statements made and history of those involved with like reports, see *Jucker v Dickey* 613 F.Supp 1124, 1133-34 (need for discovery supports appointment of counsel)

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Complexity of this case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues (see *Abdullah v. Guntis* 949 F2d 1032)

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Wherefore, for the foregoing reasons, the Court should grant the plaintiff's motion and appoint counsel in this case.

I declare under penalty of perjury that the foregoing is true and correct.

James L. Lewis
SBI # 446518
Delaware Correctional
1181 Paddock Road
Amgona DE.

*mailed
12/26/2006*

In the United States District Court
for the District of Delaware

James St. Louis
plaintiff

Civil act. #

06-682 SLR

Officer J Michael Wilson
Lauren Hatcher, Melanie
Withers and Buster Richardson

Motion to
redress
issue

James St. Louis hereby petitions the court for review of decision and complaint issued the 14th day of December, 2006. The following request is made under the ruling of *Scheuer v Rhodes* 94 S.Ct. 1683 which says it is not "unfair" or "malicious" or "frivolous" to hold liable the officials who know or should know she/he is acting outside the law, and that insisting on an awareness of clearly established constitutional limits must not unduly interfere with the exercise of official judgement. And that an official who violates the constitutional rights of a plaintiff with actions of malicious intention [must] be held accountable.

Also Article XIV section I: all

persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. [NO STATE] shall make or enforce [any] law which shall abridge the privileges or immunities of citizens of the United States [NOR SHALL] any state [DEPRIVE] any person of life, liberty or property [Without] due process of law, not deny any person within its jurisdiction the equal protection of the laws and Constitution.

Plaintiff also argues these issues for the following reasons.

#1. In response to #8 on "frivolous" actions. Ips plaintiff conceded that the 2005 petition challenged the overturn of petitioners conviction. [BUT] this petition does [NOT] challenge on that issue. With respect to the judge petitioner made it perfectly clear he was challenging the procedures, which were illegal, that were used to convict him. Petitioner specifically used, as you can see on page 3 of his initial petition, where he refers to *Maryland v Craig* 110 S.Ct. 3157 and the courts references to 3511 and *Delaware* and how important it was to protect the petitioners rights and how *Delaware* initiated

3511 to guarantee a defendant his rights to due process and a fair trial. He also discusses the integrity needed in factfinding and how people especially children can be manipulated without these statutes and rules. Petitioner quotes many Supreme Court cases showing the importance of confrontations at [all] critical stages and how the court said videotaping of testimonial statements are a critical stage which Delaware addressed in 11 Del C 3511 guaranteeing a defendant his constitutional and state rights to due process and fair treatment.

#2 Judge Robinson quoted *Heck v Humphrey* as a showing of "malicious" and duplicated allegations of another pending federal lawsuit already filed in #8 and #9. Yes there are duplications [but] to a certain point. Petitioner in previous cases was arguing for overturn of conviction. In *Carey v Piphus*

435 U.S. 247, 98 S.Ct. 1042 it says when defendant argues [procedures] involving violations of constitution he is entitled to damages under 1983 even if defendant is [NOT] seeking a wrongful conviction also see section 6 of Act 17 Stat 15 42 USC 1986.

#3 Addressing #10, Statute of Limitations claim. This argument has been addressed by many courts. The 6th Circuit will not put a statute of state limitations on a constitutional violation.

Equitable estoppel doctrine applied to inmate's 1983 claim against prosecutor and police officer arising from allegations of extra judicial conspiracy to deny him a fair trial 11 years before inmate filed his claim and, thus, statute of limitations was extended until inmate could have reasonably found out about conspiracy.

Doy v. Ryer 999 F.2d 679. Inmate in Texas had colorable claim in tolling rule which operates to toll running of statute of limitations in cases where state prisoners was required to exhaust state administrative remedies before proceeding with claim in federal court operated to toll limitations periods on 1983 claims against prison officials until prisoner had exhausted those proceedings. *Gartrell v. Jager* 981 F.2d 254.

In *Harden v. Straub* 109 S.Ct. 1998 Concluded that a federal doctrine of equitable tolling would apply to the 1983 Cause of action while state challenges to conviction or sentence were being exhausted.

In petitioner's case state proceedings did [Not] stop in 2001 but began in 2001 and ended in 2005 which means less than 2 years has passed between petitioner's final actions with state relief and his 1983 claim.

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19977

#4 Another argument just maligned via ACLU. The Supreme Court in *Brady v Maryland* 356 F.S. 2d 556 has elucidated the Brady materiality standard as follows "The Touchstone of materiality is a 'reasonable probability' of a different result, and objective is important [THE QUESTION IS [NOT] whether the defendant would more likely than not have received a different verdict with the evidence [BUT] whether in its absence he received a "FAIR TRIAL." "

Slutzky 393 F.3d @387 quoting *Kyles v Whitley* 514 U.S. 419. In petitioner's case ACLU Attorney informed him that absence of procedure for collecting evidence and chance that it affected the trial with tainted statements without their knowledge before verdict was a Brady violation, Constitutional due process violation, which would not accrue until knowledge by petitioner or under 1 (ONE) month.

Again petitioner is not arguing wrongful conviction [BUT] illegally obtained statements in violation of 11 Del C 3511 and Non acknowledgment to jury causing a Brady violation. The 3rd Circuit in a number of cases has said a claim accrues in a federal cause of action as soon as a claimant is aware

of and source of injury, [NOT] when the potential claimant knows or should know that the injury constitutes a legal wrong. See *United States v. Kusbuck* 100 S.Ct. 352; *Sandwich v. Muroski* F2d 252 254 (3rd Circuit) *Lee v. United States* 809 F2d 1406, 108 S.Ct. 772.

Citing and quoting *Edwards v. Solomayor* 557 F.S. 209, 217, the court reiterated that "once the violation of a claimant's federal constitutional rights is apparent, the federal cause of action accrues and there is [no] need to adopt a state accrual standard immersed in state requirements for a tort of malicious prosecution" see e.g. *Rose v. Badle* 692 F.S. @ 529

Seeing that petitioner first realized the Brady violation due to procedural violations within the last month, then accrual should start then for federal constitutional violation. see *Gentry v. Resolution Trust Corp.* 937 F2d 899 (3rd Circuit)

mailed 1/17/2007

In United States District Court
state of Delaware

James St. Louis
plaintiff

Civil action
06-682 SLR

✓
Officers J Michael Wilson
Lauren Hatcher, Melanie
Wilkins and Buster
Richardson

motion to warrant
extension of the
statute of limitations
via equitable
tolling

James St. Louis hereby petitions the
Court for motion to warrant an extension
of the statute of limitations via equitable
tolling to be decided with petition
submitted the 14th day of December 2006
which also contained pertinent information
in respect to this motion.

James St. Louis
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1181 Paddock Rd
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1/14/2007

Argument

Under 42 U.S.C. 1983 [1207] it says

Procedural due process violations is not complete unless and until state fails to provide due process; state may cure procedural deprivation by providing later procedural remedy, and only when state refuses to do so does constitutional violation actionable under 51983. *Arose. Jackson v City of Stone Mountain*

232 F.5 2d 1337, (also see *Zimmerman v Burch* 110 S.Ct. 975)

Also 3rd Circuit said in *Ashmead v Lewis* 38 F.3d 1386, 1387 that "Equitable tolling functions to stop the statute of limitations from running where the claims accrual date has already passed can be appropriate for 3 reasons. The 3rd is 'where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum'."

And in *Burnett v N.Y. Central RR* 85 S.Ct 1050, the supreme court said "statutes of limitations are primarily designed to assure fairness to defendant. Such statutes promote justice by

preventing "surprise" through the renewal of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared. Id @ 428 85 Act. 1050. To be sure this 'policy of repose, designed to protect defendants may be outweighed "where the interest of justice requires vindication of the plaintiff's rights in cases where the plaintiff has [NOT] slept on those rights'".

In case at hand plaintiff has filed cases in Delaware's Superior and Supreme Courts and was active in state courts until 2005 giving the state a chance to cure procedural violations and he was denied. The above cases indicate that tolling should and must comply also see *Miller v N.J. Dept't of Correction* 145 F3d 616, 618-19 (3rd Cir) showing diligence in investigating and bringing the claims as done in state courts in case at hand. In the least the case at hand should fall in terms of "basic fairness" which almost 2 centuries ago favored the plaintiff. *Coffin v Cottle* 33 Mass. 383, 385-86; or should atleast

be classified 'sisters under the skin' seeing it was addressed and tried to be remedied in state court by plaintiff.

We see in *Perez-Ruiz v. Crespo-Guillen* 25F3d 40 where it says "Procedural due process claims are not actionable unless no adequate postdeprivation remedy is available under state law." Plaintiff in *Grad* forth addressed these actions in state court and upon total denial of state remedy did he then file a § 1983 civil suit well within the two (2) year statute!

The sixth circuit of appeals refuses to apply the tolling provision to inmates § 1983 suits in case as long as results are not inconsistent with federal laws.

And whose rights have been constitutionally violated are not inconsistent. However

in *Harden v. Straub* 109 S.Ct. 1998

The Supreme Court disagreed with the appeals court and overruled it. As case at hand the constitutional violations are inconsistent with federal law denying plaintiff due process and tolling should be applied.

I/M *James St. Louis*
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